STATE OF MICHIGAN

COURT OF APPEALS

RONALD WEST, a Minor, by His Next Friend CINDY GARLAND,

Plaintiff-Appellant,

v

JONNA PROPERTIES, INC.,

Defendant-Appellee.

UNPUBLISHED
September 17, 2002

No. 232681
Oakland Circuit Court
LC No. 99-018441-NO

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for reconsideration and motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and a friend, Jason Perry, were playing on an unsecured construction site located on property owned by defendant. Non-participating defendant Murphy's Plumbing Service, Inc., had left cans of PVC primer on the site. Plaintiff and Jason lit the primer and set fire to some material. They returned to the site a second time and again lit the primer. The primer splashed on plaintiff and caused first- and second-degree burns to his body below his waist.

Plaintiff filed suit alleging that defendant failed to take reasonable steps to secure the construction site, and by so failing maintained an attractive nuisance. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff failed to put forth evidence to support the claim of attractive nuisance. In addition, defendant argued that even if it acted negligently, the children's intervening act of lighting the primer cut off its liability. The trial court denied the motion, finding that questions of fact existed.

Defendant moved for reconsideration, arguing that the trial court misapplied the law regarding the creation of an attractive nuisance and failed to address the issue of the effect of Jason's intervening acts. Defendant relied on *LeDuc v Detroit Edison Co*, 254 Mich 86; 235 NW2d 832 (1931). In that case children broke into a gasoline tank owned by the defendant and located in a vacant lot in order to obtain gasoline to burn grass and weeds. Some gasoline splashed onto a six-year-old child and ignited, resulting in the child's death. The *LeDuc* Court affirmed the trial court's grant of a directed verdict in favor of the defendant, holding that even if the defendant had acted in a negligent manner, the intervening acts of the children broke the

legal connection between the defendant's conduct and the child's injuries. *Id*., 91-93. Defendant asserted that plaintiff and Jason were aware that the primer was flammable, and that it was their act of lighting the primer that was the immediate cause of plaintiff's injuries. The trial court granted the motion for reconsideration and granted defendant's motion for summary disposition, finding *LeDuc, supra*, applicable and holding that plaintiff's and Jason's act of lighting the primer was an intervening and superseding cause that absolved defendant of liability.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

As a general rule, but without restricting the discretion of the trial court, a motion for reconsideration that merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). We review a trial court's decision on a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

A possessor of land is subject to liability for physical harm to a child trespasser caused by an artificial condition on the land if: (1) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass; (2) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily injury to such children; (3) the children because of their youth do not discover the condition or realize the risk involved in meddling with it; (4) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are outweighed by the risk to the children involved; and (5) the possessor fails to exercise reasonable care to eliminate the danger or to protect the children. *Rand v Knapp Shoe Stores*, 178 Mich App 735, 740-741; 444 NW2d 156 (1989).

Plaintiff argues that the trial court abused its discretion by granting defendant's motion for reconsideration and erred by granting the motion for summary disposition. We disagree and affirm. The trial court did not address the issue of intervening cause when ruling on defendant's motion for summary disposition from the bench, and did not abuse its discretion by granting the motion for reconsideration to address the issue. MCR 2.119(F)(3); *Churchman, supra*. Furthermore, the trial court correctly granted defendant's motion for summary disposition. The undisputed evidence showed that the construction site was unguarded, and that plaintiff and Jason trespassed thereon. The primer was contained in cans that were unguarded. However, the undisputed evidence also showed that plaintiff and Jason visited the site earlier in the day and lit the primer. Plaintiff could not establish a prima facie case of attractive nuisance because the evidence showed that he and Jason discovered the condition and recognized the risk of meddling with it. *Rand, supra*.

Moreover, the trial court correctly found that *LeDuc, supra*, was applicable and that plaintiff's and Jason's act of lighting the primer was the immediate cause of plaintiff's injuries. But for that act, plaintiff's injuries would not have occurred. The trial court properly held that the children's act of lighting the primer was an intervening/superseding cause that broke the connection between any negligence on the part of defendant and plaintiff's injuries. Summary disposition was proper.

Plaintiff's reliance on *Orzel v Scott Drug Co*, 449 Mich 550; 537 NW2d 208 (1995), is misplaced. That case concerns application of the wrongful conduct rule, and does not implicate the intervening/superseding cause doctrine.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly